

Mark E. Ellis - 127159
Anthony P. J. Valenti – 284542
Lawrence K. Iglesias – 303700
ELLIS LAW GROUP LLP
1425 River Park Drive, Suite 400
Sacramento, CA 95815
Tel: (916) 283-8820
Fax: (916) 283-8821
mellis@ellislawgrp.com
avalenti@ellislawgrp.com
liglesias@ellislawgrp.com

Attorneys for Defendant RASH CURTIS & ASSOCIATES

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SANDRA McMILLION, JESSICA ADEKOYA,
AND IGNACIO PEREZ, on Behalf of
Themselves and all Others Similarly Situated,

Plaintiffs,

v.

RASH CURTIS & ASSOCIATES,
Defendant.

Case No.: 4:16-cv-03396-YGR JSC

**DEFENDANT RASH CURTIS &
ASSOCIATES' OPPOSITION TO
PLAINTIFF'S MOTION *IN LIMINE* NO. 7**

Judge: Hon. Yvonne Gonzalez Rogers

Trial Date: May 6, 2019

1 **OPPOSITION TO PLAINTIFF'S MOTION *IN LIMINE* NO. 7**

2 Plaintiff seeks to exclude any use of deposition excerpts by Rash Curtis, based upon Plaintiff's
3 claim that designations were allegedly not made timely.

4 Importantly however, the portion of the Court's Standing Order re Pretrial Instructions
5 requiring deposition designations is entitled "Audio/Video Evidence" and clearly only pertains to the
6 use of audio or video recordings of depositions, and not simply written transcripts:

7 Audio/Video Evidence. A written transcript of all audio or video
8 recordings to be used at trial must be delivered to opposing counsel 28
9 days in advance and discussed during the meet and confer process. The
10 exhibit list must identify the specific portions of the recordings the
party intends to offer in its *case in chief* by reference to transcript
pages. The parties shall meet and confer and attempt or resolve any
disagreements regarding designations or counter-designations. ...

11 (See Standing Order, pp. 8-9, italics added.)

12 Furthermore, the Court's Standing Order re Pretrial Instructions only pertains to what a party
13 intends to offer in its "case in chief", which is defined as:

14 The portion of a trial whereby the party with the Burden of Proof in
15 the case presents evidence. The term differs from a rebuttal, whereby a
16 party seeks to contradict the other party's evidence. Case in chief
differs from 'case' in that the latter term encompasses the evidence
17 presented by both the party with the burden of proof and the party with
the burden of rebutting that evidence.

18 See <http://legal-dictionary.thefreedictionary.com/Case+in+Chief>.

19 In other words, Rash Curtis was not required to make *any* designations as to its use of written
20 deposition transcripts, especially if, whereas here, use of such transcripts are intended for rebuttal or
21 impeachment.

22 Furthermore, motions *in limine* should "rarely seek to exclude broad categories of evidence, as
23 the court is almost always better situated to rule on evidentiary issues in their factual context during
24 trial". *Colton Crane Co., LLC v. Terex Cranes Wilmington, Inc.*, 2010 WL 2035800, at *1 (C.D. Cal.
25 May 19, 2010); *Sperberg v. The Goodyear Time and Rubber Co.*, 519 F.2d 708, 712 (6th Cir. 1975).

26 Out of an abundance of caution, and in a show of good faith and transparency, Rash Curtis
27 subsequently provided the requested designations for all deposition testimony that it currently intends
28

1 to use at trial to Plaintiff on February 22, 2019, far more than 28 days ahead of the final pretrial
2 conference. *See* Standing Order re: Pretrial Instructions, p. 8.

3 Dated: March 4, 2019

4 ELLIS LAW GROUP LLP

5 By

6 Mark E. Ellis

7 Attorneys for Defendant

8 RASH CURTIS & ASSOCIATES